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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,852	11/16/2001	Gary S. Jouas	10238.002	9284
26371	7590	12/21/2004	EXAMINER	
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			BUSHEY, CHARLES S	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

5X

Office Action Summary

Application No.

09/991,852

Applicant(s)

JOUAS, GARY S.

Examiner

Scott Bushey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,10-12 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10-12 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-8, 10-12, and 16-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mallet (The Figure; page 1, lines 93-96; page 2, lines 16-26).

3. Claims 1, 2, 4-6, and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cooper (Fig. 3; page 1, lines 1-6; page 2, lines 43-47, 96-98).

4. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Anderson (Fig. 2; col. 4, lines 36-45).

Response to Arguments

5. Applicant's arguments filed October 12, 2004 have been fully considered but they are not persuasive.

With respect to the rejections over either of the Mallet and Cooper references, applicant's sole point of argument is based upon the interpretation of the meaning of "pad element", as recited by the instant claims. Applicant contends that the filling material held between the inner and outer louvered panels of Mallet and Cooper is "loose" filling material and thus cannot be considered to anticipate applicant's claimed "pad element". However, nowhere in the instant claims is there a clear and distinct structural description of the "pad element". Furthermore, applicant's own specification at page 8, last line through page 9, line 3, states, "The pad element

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22 can be comprised of any evaporative cooler pad material known in the art. Suitable cooler pad materials include aspen or similar wood fibers or synthetic fiber packed together *loosely* to allow air to pass through.” It is further noted that the crux of applicant’s invention has never apparently been the pad element, but instead the use of louvered inner and outer panels on upstream and downstream sides of the pad to both confine the pad within a space and to reduce the occurrence of liquid entrainment in the gas stream passing from the wetted pad material.

With respect to the arguments directed to the rejection based upon Anderson, such are not at all persuasive. Specifically, applicant argues that the Anderson reference does not teach inner and outer panels immediately adjacent the pad element for retaining the element without a wire retainer grid. Unfortunately for applicant, instant claims 16 and 17 only require an inner louvered panel immediately adjacent the pad element downstream side. Clearly, Anderson anticipates such. As applicant’s arguments directed to the Anderson reference as it applies to instant claims 16 and 17 are obviously not commensurate in scope with the language of the claims, the rejection must stand.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (571) 272-1153. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Bushey
Primary Examiner
Art Unit 1724


12-16-04

csb
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